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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd May 2008

No. 5203—Ii/1(J)-23/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th March 2008 in Industrial Dispute Case No. 14 of 2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of M/s Koraput Central Co-operative Bank Limited, Jeypore and their workman Shri Nilachal Padhy, Ex-Assistant Supervisor was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE NO. 14 OF 2005
Dated the 13th March 2008

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Jeypore, Dist. Koraput.

Between :

The Secretary
K. C. C. Bank Limited, Jeypore
At/P.O. Jeypore, Dist. Koraput. . . First Party—Management

Versus

Its Workman
Shri Nilachal Padhy
S/o Late Radha Krushna Padhy
Madala Street, Jeypore
Dist. Koraput. . . Second Party—Workman

Under Sections 10 and 12 of the Industrial Disputes Act, 1947.

Appearances :

For the Management	..	Shri Trinath Das Advocate, Jeypore
For the Workman	..	Miss B. Gayatri Devi Advocate, Jeypore
Date of Argument	..	23-2-2008
Date of Award	..	13-3-2008

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of the Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 9014(4), dated the 27th October 2005 for adjudication of the following disputes :—

SCHEDULE

"Whether the dismissal of Shri Nilachal Padhy, Ex-Assistant Supervisor by the Management of M/s. Koraput Central Co-operative Bank Limited, Jeypore with effect from the 15th January 1997 is legal and/or justified ? If not, what relief is the workman entitled to ?"

AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government before this court for determination of an issue with regard to the validity and propriety of the order of dismissal by the Management in respect of the workman coupled with any other relief to be granted in consequence thereof.

3. The facts presented by the workman may be described adumbrated in brief that the management while resorting to an act of dismissal having not considered the plea of adjustment of the amount taken as advance by the workman during the period of his incumbency for mitigating the misappropriation fund proved against him, the workman challenged the said order to be illegal and unjustified thereby sought for reinstatement and back wages.

4. The management on the contrary in traversing the entire assertions putforth by the workman sumptuously contended that the workman having defaulted in giving recovery of misappropriated fund in violation of the conditional order though availing of the benefit of reinstatement with lower cadre incurring loss of increments, the Disciplinary authority revoked the lenient order taken earlier entailing dismissal of the workman in light of the condition imposed on him. It is further averred by the management that the workman being the habitual offender committing grievious act of misappropriation of Bank fund and having already suffered punishment thereto the order of dismissal entertained by the management in the present case is inevitably warranted which cannot be considered as unjustified and inappropriate.

5. There seems no challenge meted out by the workman regarding the propriety of the process resorted to by the enquiry officer for establishing the charges levelled against him. The second party workman appears to have been given due and adequate opportunity of being heard to defend of his case. Principles of natural justice has been deeply and sincerely adhered to complying all the norms required to be availed by the second party workman. On

a scrutiny with greate circumspection it becomes crystal clear with proper manifestation that evidence collected by the enquiry officer from the both sides was taken care of meticulously and judiciously without being suffered from any bias. The charges levelled against the workman are considered to be duly proved taking all the relevant materials into consideration. The conclusion derived therefrom by the enquiry officer is considered to be fair just and proper without showing any error in the matter of appreciation of evidence and reaching the findings.

6. The workman though admitted the correctness of the findings of the enquiry officer but contended that, the disciplinary authority while imposing punishment did not please to consider his plea of adjustment of the amount taken as advance towards his T.A. for which he challenged the punishment to be too harsh and strikingly disproportionate. As per his contention; he though deposited the amount of Rs. 10,000 out of Rs. 20,000 on the basis of the condition imposed by the disciplinary authority, his plea of adjustment of amount of Rs. 3,644 to be refunded to him as shown in the audit report and Rs. 7,608 to be adjusted towards the advance amount taken was not considered thereby illegally suffered dismissal.

7. The disciplinary authority being the fact finding authority has exclusive power to consider the evidence with a view to maintain discipline. He is invested with the discretion to impose appropriate punishment keeping inview the magnitude or gravity of the misconduct. The Labour Court or Tribunal while excercising the power of judicial review, cannot normally substitute it's own conclusion on penality or imposed some other penalty. Reliance has been placed in a decision rendered by our Supreme Court in B. Ch. Chatrubedi *Vrs*. Union of India and others, 1996, S.C. (1) LLJ, 1231. In other words when a proper enquiry has been held by an employer on the matter of the misconduct and has been supported form the evidence adduced at the said enquiry, the Tribunal or Labour Court has no jurisdiction to sit in the judgement over the decision of the employer as whole body. The interference with the decision of the employer will be justified only when the enquiry is unfair, or the findings arrived at in the enquiry are perverse or have not based on in any evidence or the management is guilty of victimisation, unfair labour practice or *mala fides* or punishment is harsh and oppressive. The Tribunal or the Labour court cannot reapprise the evidence and arrive at a conclusion different from that arrived at by the Domestic Tribunal. Reliance has been placed in a decision rendered by our Supreme Court in East India Hotel *Vrs.* The workman AIR, 1974, S.C. 694. The new amendment 1947, under Section 11-A though enjoins the Tribunal with authority to mould the punishment but the action taken by the Tribunal or court should not be arbitrary. In this connection our Hon'ble Supreme Court reiterated in a decision rendered in Management of Hindustan Machine Tools Limited, Bangalore *Vrs*. Mohamod Usman (1994) (1) S.C.C. 152 that, whether the punishment imposed by the employer is disproportionately excessive. The Labour Court in exercise of it's discretion under Section 11-A of the Act can reduce the punishment by evaluating the severety of the misconduct in order to assess whether the punishment imposed by the employer is commensurate with the gravity of the misconduct. Even if an enquiry is proper and valid and if the punishment is shockingly disproportionate regard being had to the nature of misconduct and past record of the employee concerned involved in a misconduct or is such which no reasonable employer would ever impose in like circumstances, the Tribunal may change the imposition of such punishment as itself showing victimisation or unfair Labour practice. Reliance has been placed in a decision rendered by our Hon'ble Supreme Court in Hind Construction and Engineering Co. Ltd. *Vrs.* their workman 1964 (1) LLJ, 462, S.C. From the above pronouncement it can be deduced that, in absence of any adverse remark against the employee the extreme penalty of dismissal from the service

by the management can be considered to be schockingly disproportionate regard being had to the charge framed against him and no reasonable employer can ever impose in like circumstances the punishment of dismissal on the workman. Therefore, victimisation or unfair labour practice will be inferred from the conduct of the employee in awarding the extreme punishment of dismissal. The power of Labour Court while exercising under Section 11-A of the Industrial Disputes Act is very limited to the cases of victimisation and unfair labour practice but can modulate punishment by giving cogent reasons in lieu of discharge and dismissal as the circumstances of the case may required.

8. In the instant case the workman appears to have not ventilated his grievance before the enquiry officer in supplying documents for adjustment of the money taken as advance towards T. A. Bill, moreover he has not drawn attention of the disciplinary authority to take consideration of his plea of adjustment so as to redeem from the liability of harsh punishment. He appears to have only ventilated such grievance before the Arbitrators. The management challenged any matter being referred to any Arbitrators. The Arbitrator being examined in the Court did not produce any T. A. Bill submitted by the workman in order to assess the propriety of the claim. The workman seems to have relied on the resolution passed by a General Body giving authority to the Managing Directors of different LAMPCS to get their T.A. amount by furnishing the T.A. particulars before the President. But this resolution furnsihed by the workman does not indicate explicity or implidely that the Managing Directors are authrised to take T.A. advance. The plea of the workman is contrary to the resolution furnished by him. The amount taken as advanced by the workman does not show in the like manner in the cash book. As a matter of fact T.A. amount cannot be accrued unless the bill submitted by the workman is approved by the President who is his immediate authority. The bill amount submitted by the workman is yet to be sanctioned by the President. The sanction of T.A. amount has got no nexous with the Management which is a different authority than the President who controls the workman in the field. In the above analysis it becames quite manifest that the workman as per the resolution has accrued no existing right to be taken into consideration for adjustment of the amount by the disciplinary authority. Moreover the workman on basis of the condition imposed appears to have deposited an amount of Rs. 10,000 taken towards advance as has been reflected in the letter submitted by the workman before the disciplinary authority. Once the disputed amount is deposited as per the condition in order to relieve from the liability the said plea for adjustment can never be taken on basis of his admission to waive the adjustment. The plea of the workman that in the pretext of getting it adjusted on the deposit of Rs. 10,000 he did not deposit the rest amount is considered to be quite contradictory and dislinked under the circumstances. The non-deposit of the rest amount in violation of the condition paved the way of his dismissal entertained by the disciplinary authority.

9. The Management appears to have proved the envolvement of the workman in the like offence of misappropriation for which he has been equally penalised, though subsequently reinstated on sympathetical ground. Nothing has been challenged by the workman during the course of trial to discredit the fact unfolded by the management. There is a stigma still attached to the workman. Nothing has been shown by the workman regarding his good anticident. The previous record does explicit that he has been considered as a habitual offender dealing with the like misappropriation of Bank Fund have been duly proved and admitted by the workman. Once the act of the misappropriation is proved, may be for a small or large amount, there is no question of showing or call for any sympathy towards the workman. Reliance has been placed in a decision rendered by out S.C. in Janata Bazar *Vrs.* Secretary, Sahakari Noukar

Sangh—2000—Lab. I. C.—3302. Where there is a proof of misconduct, punishment of removal was no way to be considered as shockingly disproportionate. Reliance has been placed in a decision rendered by our own S.C.-U.P. State Road Transport Corporation *Vrs.* Subash Chandra Sarma and others—2000(1)LLJ-1117.

10. In the instant case the workman though availed of getting opportunity to be reinstated granted by the management on sympathetic ground he could not fulfil the condition imposed for which punishment of dismissal was awarded. The workman should not be recalcitrant to his own view except submitting himself before the authority to act according to the condition. Thereby punishment in harsh nature could have been avoided. There is no semblance of existing right in favour of the workman to get it adjusted for lessening the punishment. The matter of his involvement in like offence of misappropriation has compounded the matter for enhancing the punishment. The punishment awarded by the management cannot be considered to be disappropriationate which is considered to be commensurate with the gravity of the offence committed by the workman. On a analysis of the fact and circumstances of the case I am of the Hon'ble opinion that the punishment awarded by the management cannot be said to be perverse or to shock the conscience of the reasonable man who is apprised of the circumstances. In this connection this court does not incline to interfere into the matter of punishment by invoking the power under Section 11-A of the Industrial Disputes Act. The punishment of dismissal is just and proper.

ORDER

The reference submitted before this court is answered accordingly justifying the act of dismissal to be proper and justified.

Dictated and corrected by me.

G. K. MISHRA
13-3-2008
Presiding Officer
Labour Court, Jeypore

G. K. MISHRA
13-3-2008
Presiding Officer
Labour Court, Jeypore

By order of the Governor
G. JENA
Deputy Secretary to Government

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